IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30/01/2003

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THE HONOURABLE MR.JUSTICE P.SHANMUGAM
AND
THE HONOURABLE MR.JUSTICE K.P.SIVASUBRAMANIAM

H.C.P.NO.1800 OF 2002

S.Jahubar Ali .. Petitioner

-Vs-

1. The State of Tamil Nadu
rep. By the Secretary to
Government, Public (SC)
Department, Fort St.George
Chennai-600 009

2. The Union of India
rep.by the Secretary to
Government, Ministry of
Finance, Department of
Revenue, New Delhi

3. The Superintendent of
Central Prison,
Central Prison,
Chennai- 600 003. .. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for issue of a writ of Habeas Corpus to produce the petitioner from the Central Prison, Chennai, and set him at liberty.

For Petitioner :: Mr.S.Palani Kumar

For Respondents :: Mr.A.Navaneetha Krishnan,Addl.
Public Prosecutor (RR1 and 3)
Ms.Vanathi Srinivasan
Addl.Central Govt.Standing
Counsel (R.2)

:ORDER
(Order of the Court was made by K.P.SIVASUBRAMANIAM,J.)

The petitioner, being the detenu himself seeks writ of habeas corpus as against the order of detention passed against him dated 24.7.2002 by the first respondent.

2. The petitioner came to be detained under COFEPOSA as a result of his having been intercepted in the presence of independent witnesses by the Officers of Directorate of Revenue Intelligence, Chennai when he alighted at the International Airport on 5.2002 from Sri Lankan Flight UL 123 from Colombo. When he arrived, he brought with him four checked in baggages, three of which were found with baggage tags bearing his name and the remaining one was not having any baggage tag. The petitioner had declared the value of the goods brought by him as Rs.55,000/-. On verification, the Department Officials came to the conclusion that the actual assessable value of the property was more than the declared value, namely about Rs.23,00,000/- Hence, the detention order.

3. Considering that the petitioner is entitled to succeed on a point discussed below, we are not referring to all the points raised by the petitioner.
4. It is sufficient to refer to the following ground alone:
In the detention order, paragraph (xiii) dealing with the fact of the petitioner being in remand, the detaining authority has mentioned as follows:
"DRI, Chennai filed petitions on 14.6.2002 and 28.6.2002 before the ACMM, E.O.II, Chennai praying for extension of your remand and your remand was accordingly extended upto 28.6.2002 and 11.7.2002 respectively. DRI, Chennai filed a petition dated 11.7.2002 before ACMM, E. O.I, Chennai praying for extension of your remand. In his letter dated 12.7.2002, the Special Public Prosecutor for Central Government has informed that your remand period was extended till 25.7.2002."
(emphasis supplied)
Again in paragraph No.5 also, the detaining authority has described the petitioner as a "remand prisoner."

5. The contention of the learned counsel for the petitioner is that as regards the period between 11.7.2002 and 25.7.2002, there was no extension of the remand. Reference is made to the order of the learned Additional Chief Metropolitan Magistrate dated 11.7.2002 in which it has been stated that due to the non-availability of the escort, the accused was not produced. The learned Magistrate adjourned the hearing for production of the accused on 25.7.2002. Therefore, according to the learned counsel for the petitioner, the order of the detaining authority mentioning that the remand period was extended till 25.7.20 02 and the further description that he was a remand prisoner were incorrect and vitiated due to non-application of mind.

6. We have also heard the learned Public Prosecutor.

7. Learned Public Prosecutor states that in paragraph (xiii), the detaining authority has merely referred to the letter of the Special Public Prosecutor dated 12.7.2002 stating that the remand period was extended till 25.7.2002. Therefore, as this not a case where any reliance is placed on any specific remand order, the contention of the petitioner cannot be accepted.

We are unable to accept this contention. It cannot be disputed that as a fact there was no extension of remand. Therefore, the information given by the Special Public Prosecutor is wrong. The detaining authority has proceeded on an information, which is factually wrong. That being so, the fact that the Detaining authority had relied on a letter or a communication from some other authority cannot be a reason to validate the Detention order, which is passed on a wrong assumption of fact.

8. That apart, we are unable to agree with the contention raised by the learned Public Prosecutor, also on a consideration of the Judgment of the Full Bench in H.C.P.Nos.1633 and 1152 of 2001 dated 11.4.200 2. The same issue arose for consideration before the Full Bench and the Full Bench after considering the entire issue has held in their Judgment more than once that any statement made by the detaining authority to the effect that on the date of the passing of the detention order, the detenu was a remand prisoner even though there was actually no remand order by the concerned Magistrate, it would amount to a clear non-application of mind. We are bound by the said Judgment which clearly applies to the facts of this case.

9. Therefore, we are inclined to hold that the objection taken by the petitioner deserves to be sustained.

10. In the result, the H.C.P. is allowed and the respondents are directed to release the detenu forthwith unless and otherwise his custody is required in any other case.

11. The learned Additional Central Government Standing Counsel appearing for the second respondent orally seeks leave for filing an appeal before the Supreme Court. They contend that it is sufficient for the Detaining authority to be satisfied that the detenu is in police or judicial custody as a fact on the date of passing the detention order. Such custody may or may not be strictly valid in the absence of a specific order of extension of remand. But if in fact the detenu was in custody, that would be sufficient for the detaining authority to hold that he is in custody. Considering the importance of the legal issue as raised by the learned Public Prosecutor and the learned Additional Central Government Standing Counsel, namely, when once it is shown that the detenu is in fact in judicial or police custody, how far the existence of a remand extension order would be necessary for the Detaining authority to arrive at his subjective satisfaction while passing an order of preventive detention, we are inclined to grant leave. Leave granted.

Index: Yes
Internet: Yes
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To

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Government,

State of Tamil Nadu
Public (SC)
Department,
Fort St.George
Chennai-600 009

2. The Secretary to
Government,
Union of India
Ministry of Finance,
Department of
Revenue, New Delhi

3. The Superintendent of
Central Prison,
Central Prison,
Chennai- 600 003.

4.The Public Prosecutor,
High Court,
Madras-104.

((SCO LYRIX 6.1
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